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No.

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ALEXANDER L. STEVAS,
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

LACLEDE GAS COMPANY,
*Petitioner,*

v.

OFFICE OF THE PUBLIC COUNSEL OF THE
STATE OF MISSOURI,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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## QUESTIONS PRESENTED

Whether the right to a meaningful hearing guaranteed by the due process clause of the Fourteenth Amendment requires a state administrative agency to hold a protracted, full-dress hearing involving multiple parties where only one party objects to a proposed settlement; or whether a state administrative agency may, consistent with the due process clause of the Fourteenth Amendment, adopt an expedited hearing procedure, comparable to the procedures currently in use by federal administrative agencies, which allows a non-settling party to go forward with its case while at the same time reserving to the state agency the right to approve the settlement based on all the evidence before it.

## PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Court below were James M. Fischer, Public Counsel for the State of Missouri, the Public Service Commission of Missouri, and Laclede Gas Company.

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OFFICE OF THE PUBLIC COUNSEL OF THE
STATE OF MISSOURI,
*Respondent.*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

Petitioner Laclede Gas Company ("Laclede") respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Missouri, dated February 23, 1983, denying Petitioner's request for a review of a decision of the Court of Appeals (Western District) of the State of Missouri.

### OPINION BELOW

The order of the Supreme Court of the State of Missouri is not reported and is included in the Appendix hereto as Appendix A. The opinion of the Missouri Court of Appeals (Western District) is reported at 645 S.W.2d 39 and is included in the Appendix as Appendix B. The opinion of the Circuit Court of Cole County of the State of Missouri is not reported and is included in the Appendix as Appendix C. The order of the Commission is not reported, and is included in the Appendix as Appendix D.

## JURISDICTION

The judgment of the Court of Appeals (Western District) of the State of Missouri was entered on November 9, 1982. A timely application for a Rehearing or to transfer to the Supreme Court of Missouri was denied by the Court of Appeals on January 4, 1983. On February 23, 1983, the Supreme Court of the State of Missouri entered an order denying Petitioner's timely application to review the decision of the Missouri Court of Appeals. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The order of the Commission approving the design of Petitioner's rates provides in part (Appendix D, pages A15-A16) as follows:

> "Although the proposed Stipulation, offered in this case, was not executed by all parties, and in fact actively opposed by the Public Counsel, the Commission is of the opinion that the proposed rate design in the Stipulation presents the fairest and most equitable distribution of the Company's [Laclede's] rates and should be the basis for disposition of the issues presented herein."...

"It is, therefore,

ORDERED: 1. That the rate design contained in the Stipulation and Agreement received in this matter as Exhibit 18 and attached hereto as Appendix A be, and the same is, hereby adopted in disposition of all matters in this case."

## STATEMENT OF THE CASE

On July 1, 1977, the Commission instituted a proceeding (the "Commission Case") to investigate the rate design of the Petitioner. The active participants in the Commission Case included: (1) Laclede; (2) the Staff of the Commission; (3) the Respondent; (4) the City of St. Louis, Missouri; (5) six separate corporate customers of Laclede; and (6) a neighborhood community group comprised of numerous low income customers of Laclede. These active participants, over a period of three years, engaged in exhaustive discovery and numerous conferences. On October 1, 1980, all of the parties to the Commission Case, except the Respondent, executed and filed with the Commission a Stipulation and Agreement (contained in Appendix D hereto), which Stipulation and Agreement contained the joint recommendation of ten of the active parties regarding an allocation of the customer class revenues and a rate design for Laclede (the "Stipulation and Agreement"). The Stipulation and Agreement provided that: (1) the Respondent would have ample opportunity to present to the Commission its entire case and cross-examine all of the witnesses of the other parties; and (2) if the Commission determined that the rate design set forth in the Stipulation and Agreement was not adequate and reasonable, the hearing would continue and all of the parties to the Commission Case would then present whatever additional evidence they deemed advisable.

On October 9 - 10, 1980, the Respondent, at a hearing before the Commission, presented: (1) direct testimony and exhibits; (2) rebuttal testimony; (3) surrebuttal testimony; and (4) addi-

tional direct testimony and exhibits. The Respondent also cross-examined the witnesses of the other parties. On October 14, 1980, the Respondent presented its full oral argument.

The Respondent's case included: (1) a recommended methodology for designing Laclede's rates; and (2) rate schedules which purportedly supported the Respondent's recommended rate design methodology. During the proceedings, the Respondent changed its recommended rate schedules five times. The Respondent first filed with the Commission on May 28, 1980, its direct testimony wherein the Respondent's expert witness: (a) advocated that Laclede's rates be based on incremental costs; and (b) proposed specific new rate schedules. On September 10, 1980, the expert witness of the Respondent filed its surrebuttal testimony, which testimony included a change from the rate schedules it had advocated on May 28, 1980. On October 6, 1980, the Respondent (in an interview published in the *St. Louis Post-Dispatch* newspaper) advocated a third set of proposed rate schedules. The Respondent then filed with the Commission, on October 9, 1980, a fourth set of proposed rate schedules. Finally, on October 10, 1980, the Respondent filed yet a fifth set of rate schedule proposals.

On October 15, 1980, the Commission adopted the rate design identified in the Stipulation and Agreement as a part of the Commission's disposition of the merits of the Commission Case. In its petition before the Circuit Court of Cole County, as before the Commission, the Respondent, among other things, explicitly questioned the validity of the order in the Commission Case, and asserted there, as well as before the Missouri Courts, that the procedure utilized by the Commission in the Commission Case violated the due process clause of the Fourteenth Amendment to the United States Constitution. See, for example, Respondent's Motion For Rehearing, p. 4, filed with the Missouri Commission; Exhibit 2, p. 4 of Respondent's Petition for Writ of Review filed with the Missouri Circuit Court; Respondent's Brief, pp. 7 - 8, filed with the Missouri Circuit

Court; and Respondent's Brief, pp. 56 - 58, filed with the Missouri Court of Appeals. The Circuit Court of Cole County upheld the validity of the order and the proceeding in the Commission Case. On appeal, however, the Missouri Court of Appeals (the "Court Below") held that the proceedings in the Commission Case violated the Respondent's right to a meaningful hearing guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.[1]

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[1] The Court of Appeals also held that the Commission's Order did not satisfy the state statutory findings of fact requirement. That non-federal decision, however, is not an *adequate* state ground to support the judgment below. That judgment reverses and remands this case for a full-dress plenary hearing. Insufficient or deficient findings of fact by the Commission can be cured by the Commission simply by reissuing its order with proper and adequate findings of fact included therein and without a further hearing. It is therefore abundantly clear that this non-federal portion of the decision below does not preclude this Court's review of the state court's federal constitutional decision. *Klinger* v. *Missouri,* 80 U.S. (13 Wall.) 257, 263 (1872); *Williams* v. *Kaiser,* 323 U.S. 471, 478 (1945); *Maguire* v. *Tyler,* 75 U.S. (8 Wall.) 650, 665 (1869); *Johnson* v. *Risk,* 137 U.S. 300, 307 (1890); and *Lawrence* v. *State Tax Commission,* 286 U.S. 276, 282 - 283 (1932).

Furthermore, while the Court below did not explicitly state that its decision requiring a plenary hearing was based on the due process clause of the Fourteenth Amendment to the United States Constitution, rather than the due process provision of the Missouri Constitution (Article I, Section 10), the opinion of the Court below relies upon *Tonkin* v. *Jackson County Merit System Commission,* 599 S.W.2d 25, 33 (Mo.App. 1980), and *Jones* v. *State Department of Public Health and Welfare,* 354 S.W.2d 37, 41 (Mo.App. 1962), both of which rely on federal decisions interpreting the federal due process clause. This court has frequently acknowledged its jurisdiction over cases originating in state courts where, as here, the state court judgment was based upon decisions applying the Fourteenth Amendment or this Court's enunciation of federal law. *Minnesota* v. *National Tea Co.,* 309 U.S. 551, 554 - 557 (1940); and *Missouri ex rel. Southern R. Co.* v. *Mayfield,* 340 U.S. 1, 5 (1950). Moreover, historically, Missouri Courts, in interpreting portions of the Missouri Constitution that are similar to those contained in the United States Constitution, have deferred to the construction and application given to the correspon-

## REASONS FOR GRANTING THE WRIT

1. The decision below is erroneous and unprecedented, and the issue presented raises a live, important and substantial federal question concerning the right of a single party to a multiple party proceeding to invoke the due process clause of the Fourteenth Amendment in such a manner as to unduly delay and impair the effectiveness of a quasi-judicial proceeding before a state administrative agency, notwithstanding such party's full opportunity to present its case.

The Missouri Court of Appeals has incorrectly expanded the interpretation of the scope of the federal due process clause far beyond the teachings of this Court. *Market St. Ry. Co.* v. *Railroad Commission,* 324 U.S. 548, 562 (1945); and *Railroad Commission of California* v. *Pacific Gas & Electric Co.,* 302 U.S. 334, 337 - 338 (1938). By permitting a single party in a multiple party administrative proceeding to demand that a state agency engage in unwarranted, and unnecessarily protracted hearings, the unprecedented ruling below seriously misconstrues the due process clause of the Fourteenth Amendment and effectively denies state agencies the procedural flexibility to handle expeditiously and efficiently their inordinately large case loads.

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ding federal constitutional provisions. *State* v. *Owens,* 259 S.W. 100, 101 (Mo.banc 1924); *Star Square Auto Supply Co.* v. *Gerk,* 30 S.W.2d 447, 456 - 458 (Mo. 1930); and *State ex rel. Jones* v. *Atterbury,* 300 S.W.2d 806, 816 - 817 (Mo.banc 1957). Thus, for example, the Missouri Supreme Court in *Federal National Mortgage Association* v. *Howlett,* 521 S.W.2d 428, 439 (Mo. banc 1975), in the context of its due process analysis, summarily concluded that the state due process clause did not apply to the facts of that case based upon its analysis of the due process clause of the Fourteenth Amendment to the Federal Constitution. Since interpretations of the Missouri due process clause and the federal due process clause are so interwoven, the judgment of the Court Below clearly does not rest upon an *independent* interpretation of state law. *State Tax Comm'n* v. *Van Cott,* 306 U.S. 511, 514 (1939). See also, *Minnesota* v. *National Tea Co., supra,* at 556 - 557 (an ambiguous and obscure state court adjudication should not interfere with this Court's process of properly determining the propriety of state action under the federal constitution).

Moreover, the erroneous ruling of the Court Below will have a chilling effect on the parties' ability to settle and compromise their cases before state administrative tribunals, and will create substantial confusion as to a state agency's right, under the federal due process clause, to approve non-unanimous settlements.

Before the Commission decided the issues in the Commission Case, the Respondent, as the sole dissenting party with respect to the proposed Stipulation and Agreement, was provided with full and unrestricted opportunity to: (1) engage in discovery; (2) present direct, redirect, rebuttal, and surrebuttal testimony; (3) cross-examine all opposing witnesses; (4) present evidence in opposition to the Stipulation and Agreement; and (5) argue the merits of Respondent's case. Respondent fully availed itself of these opportunities. Furthermore, the Commission was not precluded in any way from approving or rejecting the Respondent's case, or any part thereof.

If the decision of the Court Below were allowed to stand, any party to a multiple party proceeding before a state administrative commission would be in a position to preclude a prompt resolution on a compromise basis and to require a commission to continue proceedings for a protracted period. A commission's statutory responsibility to regulate utilities in an effective and expeditious manner will thus be effectively eroded and subjected to the whim of any single dissenting party. This should not be permitted to occur.

2. The decision below conflicts with recent decisions of this Court, and of other federal and local courts, as to the proper interpretation of the impact of the hearing requirement of the due process clause on non-unanimous settlements. The decision below is in direct conflict with this Court's decision in *Mobil Oil Corp. v. Federal Power Commission*, 417 U.S. 283, 312 - 314 (1974), and with decisions in the District of Columbia and the Fifth and Ninth Circuits. *Pennsylvania Gas and Water Co. v. Federal Power Commission*, 463 F.2d 1242 (D.C. Cir. 1972);

*Placid Oil Company* v. *Federal Power Commission*, 483 F.2d 880 (5th Cir. 1973); and *In re Hugoton-Anadarko Area Rate Case; The People of the State of California* v. *Federal Power Commission*, 466 F.2d 974 (9th Cir. 1972). The decision below is also in conflict with the decision of the District of Columbia Court of Appeals in *Metro. Wash. Bd.* v. *Public Service Commission*, 432 A.2d 343, 361 - 363 (D.C.App. 1981).

In *Pennsylvania Gas and Water Co.*, (the "Penn Gas Case"), *supra*, petitioner asserted that it was denied procedural due process of law by virtue of the acceptance of a stipulation and agreement without a hearing. The stipulation and agreement involved in the Penn Gas Case had been agreed to by all of the parties to a proceeding before the Federal Power Commission (the "FPC"), except Pennsylvania Gas and Water Co. ("PG&W"). Judge Wilkey, writing for the District of Columbia Circuit, emphasized (at pages 1245 - 1246) that resolution of issues by settlement is in the public interest and stated that a single party to a multiple party proceeding should not be permitted to delay agency decisions for an indefinite period where the FPC determines it has before it sufficient evidence to resolve the issues presented. PG&W in the Penn Gas Case was permitted the opportunity to submit its full case to the FPC, and the FPC's decision was based on the evidence on the whole record. Judge Wilkey stated that the FPC's authority to bring proceedings before it to an end, over the objection of a party to the proceeding, is an inherent part of the FPC's authority as a regulatory agency. The same reasoning is applicable to the case at hand. The Missouri Commission's mandate as a regulatory agency similarly provides it with authority to conclude proceedings before it over the objection of a party; otherwise, a proceeding before the Missouri Commission could be unnecessarily and indefinitely continued by a lone dissenting party. The federal due process clause, as interpreted by this Court, is not intended to authorize a single party in a multiple party proceeding to hold the proceeding hostage until such time as the other parties and the agency accede to the dissenter's demands.

What the federal due process clause does provide to a dissenting party is the opportunity to present his case to the regulatory agency and to participate in the proceedings held by such regulatory agency. The record in the Commission Case conclusively establishes that Respondent had that opportunity here. The Respondent presented its case and fully participated in the proceedings. The due process clause does not require, as the Court Below in effect held, that a Commission proceeding must be unduly protracted whenever a single party with an extreme, unprovable and untenable position insists that it be. Such an interpretation of the federal due process clause would severely impair the ability and authority of the Commission to carry out effectively its statutory responsibilities, and is in no way mandated by due process requirements.

In the *Mobil Oil Corp., supra; Placid Oil Company, supra;* and *Hugoton-Anadarko, supra;* cases, this Court and the Fifth and Ninth Circuits recognized that the FPC could properly accept a non-unanimous settlement as a basis for its decision on the merits, provided such FPC determination was based on an independent finding supported by the substantial evidence on the whole record. The District of Columbia Court of Appeals in *Metro. Wash. Bd., supra,* also made a similar finding with respect to the local Public Service Commission. Here, there is no evidence in the record which would in any way indicate that the Commission either failed to consider the evidence submitted by the Respondent or refused to accept the factual allegations submitted by the Respondent as being true. On the contrary, the record in the Commission Case conclusively demonstrates that the Commission found the rate design [illegible] tion and Agreement preferable to the rate design advocated by the Respondent. To assume, as the Respondent did before the Court below, that the Commission simply ignored the Respondent's evidence is to engage in an assumption that has no basis in the record. If the decision of the Court Below were permitted to stand, then any party to a Commission proceeding failing to make a persuasive case would be in a position to force a state

regulatory agency and all other parties either to hold lengthy and non-productive hearings, or to consider adopting, in whole or in part, some of the dissenter's untenable assertions. Such a state of affairs would be inefficient, unfortunate, wasteful and counterproductive, and is in no way mandated by the Fourteenth Amendment.

## CONCLUSION

For each and all of the foregoing reasons, it is respectfully submitted that a writ of certiorari should issue to review the judgment and opinion of the Court Below.

Respectfully submitted,

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# APPENDIX

## APPENDIX A

No. 64754

IN THE SUPREME COURT OF MISSOURI

WD #33143

January Session 1983

State ex rel. James M. Fischer, Public Counsel,
Relator-Appellant,

vs.

Public Service Commission of Missouri,
Respondents,

and

Laclede Gas Company,
Intervenor-Respondent.

### TRANSFER

Now at this day, on consideration of Intervenor-Respondent Laclede Gas Company's Application to transfer the above entitled cause from the Wester District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI-SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session thereof, 1983, and on the 23rd day of February 1983, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 23rd day of February 1983

/s/ Thomas F. Simon Clerk

/s/ Norma Jean Cresck D. C.

## APPENDIX B

State ex rel. James M. Fischer,
Public Counsel for the State of
Missouri, Relator-Appellant,

v.

Public Service Commission of
Missouri, Respondents,

and

Laclede Gas Company,
Intervenor-Respondent.

No. 33143.

Missouri Court of Appeals,
Western District.

Nov. 9, 1982.

Motion for Rehearing and/or Transfer to
Supreme Court Overruled and Denied
Jan. 4, 1983.

Application to Transfer Denied
Feb. 23, 1983.

James M. Fischer, Michael C. Pendergast, Jefferson City, for relator-appellant.

William C. Harrelson, Jefferson City, for respondents.

Donald L. Godiner, Robert M. Lee, St. Louis, for intervenor-respondent.

Before NUGENT, P.J., and TURNAGE and LOWENSTEIN, JJ.

TURNAGE, Judge.

James M. Fischer, Public Counsel, appeals from a judgment of the Circuit Court which affirmed an order made by the Public Service Commission. Fischer contends the order is illegal because it was made without statutory authority. Reversed and remanded.

On August 15, 1977, the Commission sua sponte instituted an investigation of the rate design of Laclede Gas Company.[1] The Public Counsel, Laclede, and the Commission's counsel and staff all participated in this proceeding. In addition, the Commission granted petitions for intervention by the City of St. Louis, Union-Sarah Community Corporation, a community service corporation in St. Louis representing primarily low income consumers, and a group of industries including General Motors Corporation, Monsanto Company, ACF Industries, Inc., Anheuser-Busch, Inc., McDonnell Douglas Corporation, and Nooter Corporation. Laclede, Public Counsel, the Commission staff, and the industrial intervenors all filed prepared testimonies and exhibits with the Commission prior to scheduled hearings.

In September of 1980, hearings were held in St. Louis and Clayton to hear the testimony of the general public. Thereafter, all of the parties with the exception of the Public Counsel reached a compromise regarding the rate design issues. A stipulation and agreement was filed with the Commission setting forth such an agreement. The agreement proposed that the Commission approve revenue increases for the following customer classes: general service, seasonal service, large volume service, interruptible service, general L.P. gas service, unmetered gas light service, special contracts, and sales for resale. The increases ranged

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[1] A rate design is the allocation (of the burden of paying a utility's overall revenue requirement) among its various customer classes. Thus, a rate design does not alter the overall revenues received by the utility, but may dramatically change the rates paid by individual customers.

from $5,300 in sales for resale, to $417,400 in the general service class. The agreement further recommended a decrease of $1,144,600 in the general space heating class. Also included in the agreement was an allocation of the rate increase that the Commission had recently granted to Laclede. The agreement recommended that declining block rates be instituted for the general space heating and seasonal service classes.

The rate design hearing was set for October 9-10, 1980, and the Public Counsel appeared at that time prepared to present his case. However, at that time the Commission informed the Public Counsel that it had adopted a "limited hearing procedure," which was a part of the recommendation made by the parties to the stipulation and agreement. The procedure set forth in the agreement provided that any non-signing party would retain its right to present its case in full or in part, and to cross-examine any witnesses of any party to the agreement on any matter pertaining to the rate design case. The agreement further provided that after any non-signing party had been accorded its right to a hearing as provided by law, the Commission would enter an order either approving or disapproving the agreement. In the event that the Commission rejected the agreement, there would be a full and contested hearing, at which time each of the parties would address all the merits and issues of the case.

In accordance with the agreement, the Commission ruled prior to the hearing that the only issue it would consider was whether or not the stipulation and agreement would be accepted or rejected, and a full and contested hearing would be held only in the event that the Commission rejected the agreement. The Commission allowed the Public Counsel's witness to present the Public Counsel's rate design proposal, and allowed the Public Counsel to cross-examine the opposing witnesses regarding their prepared testimonies. A few days later the Commission heard oral arguments, and announced that it had voted to dispose of the matter under the terms proposed in the agreement.

On October 15, 1980, the Commission entered its order. After reciting a history of the rate design investigation the order continued as follows:

*Findings of Fact*

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

> The purpose of the instant case is the determination of the proper distribution of the Company's cost of service within the various classes of customers. The Commission, after considering the evidence offered on October 9 and 10, 1980, and the arguments of counsel on October 14, 1980, is of the opinion that the proposed Stipulation, although not joined in by all of the parties, represents the fairest and most equitable distribution of the rates authorized in Case No. GR-80-210. The proceedings conducted in this matter provided the Commission with the opportunity to accept or reject the Stipulation. If the resolution of the case which was advocated by the signatories of the Stipulation was rejected, the case was to proceed to full hearing with all parties free to advocate their respective positions taken prior to the prehearing negotiations. In determining that the Stipulation should be adopted, the Commission has taken into consideration that it resulted from extensive negotiations between groups with varying interests and economic positions. Not only have the negotiators included large-use industrial customers, but also representatives of the City of St. Louis with its cross section of citizenry as well as representatives of a neighborhood organization. In the Commission's opinion, the Stipulation attached hereto as Appendix A and offered by those diverse groups, represents a fair and reasonable distribution of the Company's rates and should be adopted in disposition of this matter.

**[1]** According to Secton 386.510, RSMo 1973, this court's review of an appeal from an order of the Public Service Commission is limited to a determination of the order's lawfulness and reasonableness. The question of an order's lawfulness turns on whether or not the Commission had statutory authority to act as it did. *State ex rel. Beaufort Transfer Co.* v. *Clark*, 504 S.W.2d 216, 217[2] (Mo.App.1973).

**[2]** Public Counsel first contends the Commission had no authority to abort the full hearing procedure and consider this matter under a limited hearing procedure. The Commission argues that under Section 386.410 RSMo 1977, it was authorized to consider this matter under the limited hearing procedure adopted. That section provides that all hearings before the Commission should be governed by rules to be adopted and prescribed by the Commission, and that no procedural formalities be observed.

Upon closer examination, it is clear that Section 386.410 did not authorize the limited hearing procedure utilized in this case. It does not, as the Commission claims, give it unlimited discretion to conduct its hearings in any possible manner. Rather, it gives the Commission flexibility in its proceedings, as long as its proceedings satisfy all other statutory requirements.

**[3]** One such section which sets forth minimal procedural requirements for Commission hearings is Section 386.420 RSMo 1978. This section guarantees that Public Counsel and all other parties to a Commission proceeding have the right to be heard and to introduce evidence. This section also states that whenever the Commission makes an investigation, "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises." In *State ex rel. Rice* v. *Public Service Commission et al.*, 359 Mo. 109, 220 S.W.2d 61 (1949), the court stated that this statute[2] required the Commission to include findings of fact in all of its written

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[2] The 1939 version of the statute, which was relied on in *State ex rel. Rice*, was virtually identical to the current version.

reports.[3] *Id.* 220 S.W.2d at 65[8].

The order entered by the Commission in this case does not meet the statutory findings of facts requirement. The findings in this case, as quoted above, are completely conclusory, and provide no insights into if and how controlling issues were resolved.[4] There are many factual issues which the Commission would necessarily have considered before entering an order adopting a rate design for Laclede, but which are absent from the findings of fact. For example, the Commission increased the revenue from the rates in the general service class by $417,400, although Chairman Slaving stated in her concurring opinion to the order that there was no evidentiary support for this decision, except for the stipulation agreement itself. The adoption of declining block rates for general space heating and seasonal service classes also seems to have been made without evidentiary support, and was not mentioned in the findings of fact. The Commission's decision to decrease the class revenue requirement of the general space heating class by $1,144,600 was made without any findings of fact concerning the cost of services relative to this class, in comparison with the cost of services for other classes. In sum, the allocation of rates among the various classes of service rests on questions of fact. *Smith* v. *Public Service Commission,* 351 S.W.2d 768, 772[3] (Mo.1961). Since there were insufficient findings of fact in this case the necessary questions of fact were not resolved.

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[3] The Administrative Procedure Act also requires that orders in all contested cases contain findings of fact. Section 536.090, RSMo 1957. This statute was applied to the Public Service Commission in *State ex rel. St. Louis Public Service Co.* v. *Public Service Commission,* 365 Mo. 1032, 291 S.W.2d 95, 98[2] (1956).

[4] This issue has been addressed in cases not pertaining to the Public Service Commission in particular, but to administrative agencies in general. The standard required for findings of facts is set forth in *Glasnapp* v. *State Banking Board,* 545 S.W.2d 382 (Mo.App.1976). This court is persuaded that the findings of fact in this case are so obviously inadequate, that a discussion and application of the *Glasnapp* standard is unnecessary.

The above examples are but a few of the many findings of fact that the Commission was required to determine, but failed to address. Rather than performing its statutory duty to fix a rate design for Laclede based on findings of fact supported by competent and substantial evidence, the Commission appears to have simply adopted the stipulation agreement. This procedure is completely contrary to law, and cannot form the basis for a valid order by the Commission.

**[4-6]** Public Counsel has also contended that the limited hearing procedure used in this case violated due process of law. This court has authority to examine acts of the Public Service Commission for due process violations. *State ex rel. Chicago Rock Island & Pacific Railroad Company* v. *Public Service Commission,* 312 S.W.2d 791, 796[2] (Mo. banc 1958).

Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *Tonkin* v. *Jackson County Merit System Commission,* 599 S.W.2d 25, 32-33[7] (Mo.App.1980) and *Jones v. State Department of Public Health and Welfare,* 354 S.W.2d 37, 39-40[2] (Mo.App. 1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Merry Heart Nursing and Convalescent Home, Inc.* v. *Dougherty,* 131 N.J.Super. 412, 330 A.2d 370, 373-374[7] (1974).

The hearing procedure followed in this case failed to satisfy the due process requirement. Although Public Counsel was allowed to present his rate design proposal and to cross-examine the opposing witnesses, the Commission had previously decided that the only issue it would consider was whether or not to approve the stipulation and agreement. In light of this decision, the hearing afforded Public Counsel was not meaningful, in that the Commission was precluded from approving anything but the stipulated rate design in the course of the hearing in question. The question properly before the Commission was

what rate design to adopt, rather than whether or not to adopt one particular proposal. Thus, the hearing procedure adopted in this case was a violation of the due process which should be accorded to Public Counsel in his capacity as the representative of the public.

In her concurring opinion, Chairman Slavin stated that she voted for the order which adopted the stipulation agreement principally because that would allow the new rates previously adopted to go into effect almost immediately, whereas if a full hearing on the merits in the rate design case was held, a decision could not take effect in the heating season of 1980-1981. She concluded that the stipulated rate design offered the most immediate solution to those rate bearers who were most adversely affected by the rate case decided just before the rate design matter. However, the exigency of a situation does not constitute grounds for the Commission to act without statutory authority.

In conclusion, the limited hearing procedure used in this case was unauthorized. By adopting the stipulation agreement rather than conducting a full and contested hearing on the rate design issue, the Commission was able to avoid making proper findings of fact. In addition, the hearing procedure in this case violated due process of law by denying Public Counsel a fair and meaningful opportunity to be heard. Thus, the order in this case is unlawful in that the Commission had no statutory authority to act as it did. The judgment of the circuit court is reversed and this cause is remanded to that court with directions to remand this case to the Public Service Commission for further proceedings.[5]

All concur.

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[5] The Public Counsel objected that the order in this case failed to certify its compliance with Section 536.080 RSMo 1957 and Section 386.130 RSMo 1939, as discussed in *State ex rel. Jackson County* v. *Public Service Commission,* 532 S.W.2d 20, 30[6] (Mo. banc 1975), *cert. denied* 429 U.S. 822, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976). The Commission is well aware of the certification requirement, and future orders will undoubtedly contain such certification.

## APPENDIX C

IN THE CIRCUIT COURT OF COLE COUNTY,
MISSOURI
DIVISON I

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No. CV181-19cc

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State ex rel. William M. Barvick,
Public Counsel for State of Missouri,
Relator,

vs.

Public Service Commission of Missouri,
Respondent,

Laclede Gas Company, a corporation,
Intervenor-Respondent.

### ORDER AND JUDGMENT

NOW ON THIS 13th day of August, 1981, this cause having been taken up and considered, the Court finds that the Report and Order of the Respondent, Public Service Commission, issued on October 15, 1980, in "In the matter of the rate design of Laclede Gas Company, Case No. GO-78-38" is lawful and reasonable in all respects, and is supported by competent and substantial evidence upon the record as a whole; thus, the Court is required by law to affirm the said Report and Order.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the said Report and Order of the Respondent, Public Service Commission, issued on October 15, 1980, in "In the matter of the rate design of Laclede Gas Company, Case No. GO-78-38" be, and it is hereby, affirmed.

James H. McHenry
Circuit Judge

## APPENDIX D

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

*CASE NO. GO-78-38*

In the matter of the Rate Design
of Laclede Gas Company.

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APPEARANCES:

*Robert M. Lee,* Attorney at Law, *Donald L. Godiner,* and Lawrence J. Bannes, Attorney at Law, 720 Olive Street, Room 1528, St. Louis, Missouri 63101, for Laclede Gas Company

*Freeman Robertson Bosley,* Attorney at Law, Legal Services of Eastern Missouri, Inc., 607 N. Grand, St. Louis, Missouri 63103, for Union-Sarah Community Corporation.

*Robert C. Johnson,* Attorney at Law, 314 N. Broadway, St. Louis, Missouri 63102, for Industrial Intervenors, Monsanto, et al.

*Robert C. McNicholas,* Associate City Counselor, 314 City Hall, St. Louis, Missouri 63103, for the City of St. Louis and Thomas A. Connelly, City Counselor.

*Herman Barken,* Associate County Counselor, 41 South Central, Clayton, Missouri 63105, for Thomas W. Wehrle, County Counselor and St. Louis County, Missouri.

*William M. Barvick,* Public Counsel, and *James M. Fischer,* Assistant Public Counsel, P. O. Box 1216, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

*Treva J. Hearne*, Assistant General Counsel, and William C. Harrelson, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REPORT AND ORDER**

By its Report and Order in Case No. GR-77-33, issued July 1, 1977, the Commission expressed an intent to institute a separate case to investigate the propriety of the rate design of Laclede Gas Company (Laclede). On August 15, 1977, the Commission, by Order, instituted this docket for that purpose and directed all parties, so desiring, to file notice of intent to intervene and participate in a prestudy conference.

As a result of the prestudy conference, a schedule for prefiling evidence was established. In response to numerous requests by various parties, the time for filing evidence and the proposed hearing date was continued from time to time.

On April 29, 1980, the Public Counsel filed his Motion to Consolidate and Expand Hearings. In response to the Motion, the Commission, by Order dated May 19, 1980, consolidated this matter with Laclede's rate case in Case No. GR-80-210. Hearings were held for the public in St. Louis, Missouri, in both cases on September 9, 1980, and a prehearing conference was scheduled to commence in Jefferson City, Missouri, on September 15, 1980, with the hearing to commence on September 22, 1980, and continue for four weeks if necessary.

As a result of the prehearing conference, all parties entered into a Stipulation which presented to the Commission, and accepted, a disposition of Case No. GR-80-210. As a result of a further prehearing conference, five of the six active parties in the instant case executed a proposed Stipulation and Agreement. The Stipulation, filed October 1, 1980, was not executed by the Public Counsel. The parties executing the Stipulation proposed that an abbreviated or a partial hearing should be held

to determine if the Stipulation should be accepted or rejected, and if rejected, the hearing would go forward to a conclusion. A hearing was held on the 9th and 10th days of October, 1980, at which time the Public Counsel called, for cross-examination, witnesses of the other parties and offered his own case in opposition to the Stipulation and in support of his own proposed rate design. Oral argument was heard by the Commission on October 14, 1980, after which it was decided to accept the proposed Stipulation and Agreement in disposition of the issues in this case.

**Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

The purpose of the instant case is the determination of the proper distribution of the Company's cost of service within the various classes of customers. The Commission, after considering the evidence offered on October 9 and 10, 1980, and the arguments of counsel on October 14, 1980, is of the opinion that the proposed Stipulation, although not joined in by all of the parties, represents the fairest and most equitable distribution of the rates authorized in Case No. GR-80-210.

The proceedings conducted in this matter provided the Commission with the opportunity to accept or reject the Stipulation. If the resolution of the case which was advocated by the signatories of the Stipulation was rejected, the case was to proceed to full hearing with all parties free to advocate their respective positions taken prior to the prehearing negotiations.

In determining that the Stipulation should be adopted, the Commission has taken into consideration that it resulted from extensive negotiations between groups with varying interests and economic positions. Not only have the negotiators included large-use industrial customers but also representatives of the City

of St. Louis with its cross section of citizenry as well as representatives of a neighborhood organization. In the Commission's opinion, the Stipulation attached hereto as Appendix A and offered by those diverse groups, represents a fair and reasonable distribution of the Company's rates and should be adopted in disposition of this matter.

**Conclusions**

The Missouri Public Service Commission has arrived at the following conclusions:

The Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1978.

The Commission, after notice and hearing, may order a change in any rate, charge, or rental, in any regulation or practice affecting such rate, charge, or rental, and it may determine and prescribe the lawful rate, charge or rental, and the lawful regulation or practice affecting such rate, charge, or rental thereafter to be observed.

The Commission may consider all facts, which in its judgment may have any bearing upon a proper determination of the price to be charged. The Commission is not bound by any Stipulation between the parties, however, such agreement should be given strong weight in disposing of outstanding issues.

Although the proposed Stipulation, offered in this case, was not executed by all parties, and in fact actively opposed by the Public Counsel, the Commission is of the opinion that the proposed rate design in the Stipulation presents the fairest and most equitable distribution of the Company's rates and should be the basis for disposition of the issues presented herein.

Formality or method of procedure is secondary to the goal of setting fair and reasonable rates and in the Commission's opin-

ion the collective recommendation of the majority of the parties in this matter, embodied in the Stipulation and Agreement, should be adopted.

It is, therefore,

ORDERED: 1. That the rate design contained in the Stipulation and Agreement received in this matter as Exhibit 18 and attached hereto as Appendix A be, and the same is, hereby adopted in disposition of all matters in this case.

ORDERED: 2. That Laclede Gas Company be, and is, hereby directed to file revised tariffs designed to implement the rate schedules set forth in Schedule 1 of Exhibit A attached to the Stipulation and Agreement, and that the tariffs herein authorized may be effective for gas bills based on meter readings on and after the effective date of this Report and Order.

ORDERED: 3. That this Report and Order shall become effective on the 15th day of November, 1980.

BY THE COMMISSION

/s/ D. Michael Hearst
Secretary

(SEAL)

Slavin, Chm., McCartney, Fraas,
Dority and Bryant, CC., Concur.

Dated at Jefferson City, Missouri,
this 15th day of October, 1980.

## OPINION IN CASE NO. GO-78-38
## LACLEDE GAS COMPANY

**by**

**Alberta C. Slavin**

My vote in support of a stipulated settlement in Case No. GO-78-38 requires an explanation in the light of my negative vote and dissenting opinion in Case No. GR-80-210, Laclede's revenue case.

Many months ago, the Commission set for hearing these two cases in tandem. It was the presumption of the Commission that rate redesign should be considered in the context of a proposed revenue change. The presumption again was that if the Commission approved a revenue increase that the new rate design could be applied to such an increase.

However, on September 24, 1980, the Commission was presented with a stipulated settlement in the revenue case. The rates in this proposed settlement were to become effective on October 10, 1980. The Commission had neither heard any evidence or received any proposed stipulated settlement in the rate design case.

When the Commission approved the stipulation, roughly $9,500,000 of the $13,400,000 allowed was allocated to the general or space heating customers of Laclede Gas Company. The increase went into effect on October 10, 1980, the beginning of the 1980-1981 heating season.

Some days after the Commission approved this revenue case stipulation over my dissenting vote, the Commission was presented with a stipulation in the Case No. GO-78-38, the rate design case. Public Counsel opposed the stipulation and requested an opportunity to go forward to present his evidence to the Commission. The Commission agreed to hear this evidence as well as testimony which attacked the stipulation. However,

the Commission did not have the authority to accept the case of the Public Counsel under this limited proceeding - only the right to accept or reject the stipulation and then go to full hearing on the matter.

My vote in support of the stipulation is principally because the stipulated rates can go into effect almost immediately, whereas if the Commission goes to full hearing to determine the merits of the case on full evidence, a decision which would take effect in this heating season is almost impossible. The pressure to arrive at the best possible solution based on the evidence was eliminated when the increase was permitted to go into effect on October 10. Therefore, the compromise rate design brought forward in the stipulation offers the most immediate solution to those ratepayers who are most adversely affected in the recent rate case decision.

Although the stipulation goes counter to some of the decisions reached in the area of rate design by the Commission in other gas rate design cases, it does offer some immediate relief to the space heating customers of Laclede Gas. Although the stipulation does consolidate schedules and divisions, it imposes an increase on general service customers which cannot be supported other than through this compromise. It leaves in place a declining block structure although modified, which is designed to protect the largest residential users of gas when more appropriate measures to protect these users might have been considered. These features represent the compromise of the parties involved.

My vote in support of the stipulation accepts those compromises despite my recognition that principles established in prior cases by this Commission might only be attained after lengthy proceedings and a long delay in providing relief to those who need it now.

/s/ Alberta C. Slavin, Chairman

APPENDIX A

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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Case No. GO-78-38

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In the Matter of the Rate Design
of Laclede Gas Company.

**STIPULATION AND AGREEMENT**

The parties and intervenors in Case No. GO-78-38 are: (1) the Staff of the Missouri Public Service Commission ("Staff"); (2) Laclede Gas Company ("Laclede"); (3) the Office of Public Counsel ("Public Counsel"); (4) the City of St. Louis ("City"); (5) Union Sarah Community Corporation ("Union Sarah"); (6) Utility Consumers' Counsel of Missouri, Inc. ("UCCM"); and (7) General Motors Corp., Monsanto Co., AFC Industries, Anheuser-Busch, Inc., McDonnell Douglas Corp., and Nooter Corp. ("Industrial Intervenors").

The parties to this Stipulation and Agreement are: (1) Laclede; (2) Staff; (3) City; (4) Industrial Intervenors; and (5) Union Sarah.

UCCM has not participated in any of the prehearing proceedings in Case No. GO-78-38, nor has UCCM filed any testimony or exhibits or indicated any intention to participate in any future proceedings in Case No. GO-78-38.

For the purposes of resolving all issues before the Missouri Public Service Commission (the "Commission") in Case No. GO-78-38, the undersigned parties and intervenors stipulate and agree as follows:

1. That the rate schedules contained in Exhibit A attached hereto, and made a part hereof, are intended to and shall be utilized to recover in full Laclede's total annual revenue requirement (including, but not limited to, the revenue increase authorized by the Commission in Case No. GR-80-210). Hereinafter, any reference to "this Stipulation and Agreement" shall be deemed for all purposes to include Exhibit A attached hereto.

2. That Laclede shall be authorized by the Commission to file revised tariffs desinged to implement the rate schedules expressly set forth in Schedule I of Exhibit A attached hereto, and made a part hereof.

3. That the revised tariffs referred to in Clause 2 of this Stipulation and Agreement shall become effective (provided the Commission acts expeditiously to accept this Stipulation and Agreement) no later than the December, 1980, cycle billing month. Laclede further agrees to use its best efforts to make said revised tariffs fully effective for gas bills based on meter readings taken on and after November 11, 1980, or as soon thereafter as practicable.

4. That the agreements and terms in this Stipulation and Agreement: (1) have resulted from extensive negotiations; (2) are interdependent; and (3) are for the sole purpose of disposing of Case No. GO-78-38. In the event the Commission does not, by its final Report and Order issued in Case No. GO-78-38, approve and adopt each and every specific agreement and term contained in this Stipulation and Agreement, this Stipulation And Agreement shall be void from its inception and none of the parties to this Stipulation and Agreement shall then be in any way prejudiced or bound by the agreements or terms of this Stipulation and Agreement: (1) in future proceedings in Case No. GO-78-38; or, (2) in any future proceeding, of whatever type or nature, before the Commission, any state or federal agency, or any court of law.

5. That none of the parties to this Stipulation and Agreement shall be deemed to have approved of, or acquiesced in, any gas utility rate design principle utilized in the settlement described in this Stipulation and Agreement.

6. That the prefiled direct and rebuttal testimony and exhibits of the witnesses appearing on behalf of the parties to this Stipulation and Agreement shall be received into evidence, without the necessity of the said witnesses taking the witness stand.

7. That in the event the Commission accepts each and every specific agreement and term contained in this Stipulation and Agreement and issues a Report and Order implementing the agreements and terms hereof, the parties to this Stipulation and Agreement waive:

A. The right to cross-examine the witnesses of the parties to this Stipulation and Agreement with respect to the prefiled direct and/or rebuttal testimony and exhibits of such witnesses;

B. The right pursuant to Section 536.080(1) RSMo. 1978* to present oral arguments or written briefs pertaining to the prefiled direct and rebuttal testimony and exhibits of the witnesses of the parties to this Stipulation and Agreement;

C. The right pursuant to Section 536.080(2) pertaining to the reading of the record by the Commission; and

D. The right pursuant to Section 386.510 pertaining to judicial review of the Commission's final Report and Order in Case No. GO-78-38.

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* Hereinafter reference to RSMo. 1978 shall be by section number only.

8. That the parties to this Stipulation and Agreement expressly do not waive any of the rights referred to in clauses 6 and 7 of this Stipulation and Agreement as such rights may apply to any prefiled direct and rebuttal testimony and exhibits of any parties and/or intervenors in Case No. GO-78-38 who are not parties to this Stipulation and Agreement.

9. That all parties to Case No. GO-78-38 are not parties to this Stipulation and Agreement ("non-signing parties"), and that it is not the intent of the parties to this Stipulation and Agreement to, in any way, preclude or deny, or cause the Commission to preclude or deny, to any non-signing party its right to substantive or procedural due process of law or any rights such non-signing party may have or be entitled to in this proceeding before this Commission, including, but not limited to, the right to: (1) present in full, or in part, such non-signing party's case; and (2) cross-examine any witness of any party to this Stipulation and Agreement on any matter pending before the Commission in Case No. GO-78-38.

10. That the Commission will, after any non-signing party has been accorded its right to substantive and procedural due process of law as more fully described in Clause 9 of this Stipulation and Agreement, enter its order either approving or rejecting this Stipulation and Agreement; provided, that in the event the Commission decides in its order to reject this Stipulation and Agreement, the hearing in Case No. GO-78-38 will resume on October 9, 1980, at which time *all* parties to Case No. GO-78-38 will be accorded the right to a full and contested hearing on the merits and issues contained in, or hereinafter arising in, Case No. GO-78-38.

11. That Schedules II, III, and IV of Exhibit A, attached to and made a part of this Stipulation and Agreement, are offered to the Commission in support of and as an explanation of the rate design described in this Stipulation and Agreement.

Respectfully submitted,

Missouri Public Service
Commission Staff
Treva J. Hearne
Assistant General Counsel
P. O. Box 360
Jefferson City Mo. 65102

Laclede Gas Company
Donald L. Godiner
General Counsel
720 Olive Street, Room 1522
St. Louis, Mo. 63101

City of St. Louis
Robert C. McNicholas
Associate City Counselor
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St. Louis, Mo. 63103

Robert C. Johnson,
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Monsanto, Co.; AFC Industries;
Anheuser-Busch, Inc.; McDonnell
Douglas Corp.; and Nooter
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314 N. Broadway, Suite 930
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Union Sarah Community Corp.
Freeman Bosley, Atty. at Law
Legal Services of Eastern
Missouri, Inc.
607 North Grand Boulevard
St. Louis, Mo. 63103

Mo PSC Case No. GO-78-38
Stipulation and Agreement
Exhibit A
Schedule I

## LACLEDE GAS COMPANY

## SUMMARY OF PROPOSED BASE TARIFF RATES INCLUDING GR 80-210 RATE INCREASE

| PROPOSED RATE CLASSES | | LACLEDE & ST. CHARLES DIVISIONS | MISSOURI NATURAL & MIDWEST MISSOURI DIVISIONS |
|---|---|---|---|
| **General Service** | Customer Charge/Month | $3.50 | $3.50 |
| | Commodity Charge/Therm | 25.344¢ | 27.575¢ |
| **General Space Heating** | Customer Charge/Month | $3.50 | $3.50 |
| | Commodity Charge/Therm | | |
| | 1st. 65 Therms | 25.344¢ | 27.575¢ |
| | All Over 65 Therms | 22.622¢ | 24.878¢ |
| **Seasonal Service** (May through October) | Customer Charge/Month | $3.50 | $3.50 |
| | Commodity Charge/Therm | | |
| | 1st. 65 Therms | 25.344¢ | 27.575¢ |
| | All Over 65 Therms | 17.892¢ | 17.892¢ |

| | | | |
|---|---|---|---|
| **Large Volume Service** | Customer Charge/Month | $240 | $240 |
| | Demand Charge/Month/Therm | 45¢ | 45¢ |
| | Commodity Charge/Therm | 16.957¢ | 17.509¢ |
| **Interruptible Service** | Customer Charge/Month | $240 | $240 |
| | Commodity Charge/Therm | 18.148¢ | 18.700¢ |
| **General L.P. Gas Service** | Customer Charge/Month | $3.50 | $3.50 |
| | Commodity Charge/Gallon | 54.284¢ | 54.284¢ |
| **Unmetered Gas Light Service** | Customer Charge/Month | $1.50 | $1.50 |
| | 1st. Mantle Unit/Light/Month | $5.32 | $5.32 |
| | Ea. Addl. Mantle Unit/Light/Mo. | $3.77 | $3.77 |

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Mo PSC Case No. GO-78-38
Stipulation and Agreement
Exhibit A
Schedule II

## LACLEDE GAS COMPANY

## EXPLANATION AND SUMMARY OF STIPULATED RATE DESIGN CHANGES

**General**

The rate classes and charges for gas service set out in Schedule 1 hereof are designed to replace all of the tariff schedules of the Company which will be effective October 10, 1980 per Commission Report and Order dated September 24, 1980 in Case No. GR-80-210. The proposed Schedule 1 rates include specific agreements of the parties to the Stipulation as to (i) consolidation and changes in rate level differentials among the Company's four operating divisions, (ii) consolidation of rate classes on a uniform system-wide basis, (iii) the basic structure and level of rates for each customer class and (iv) the allocation of the $13,338,153 rate increase granted the Company in Case No. GR-80-210.

**1) Consolidation and Changes in Rate Differential by Division**

The proposed Schedule 1 rates provide for two divisional tariff levels in lieu of the presently existing four totally different tariff schedules. Under the proposal, the Laclede and St. Charles divisions are combined under one uniform set of rates and the Midwest Missouri and Missouri Natural divisions are combined under a second set of rates.

As shown on Schedule 111, the overall St. Charles division rate level is reduced by $286,700 annually under the Laclede-St. Charles combined schedules. The overall rate level in the Missouri Natural division is decreased by $434,100 annually and the Midwest Missouri division increased by $185,600 annually under the proposed combined schedules, a net decrease of $248,500 annually. The resulting combined Missouri Natural-Midwest Missouri charges are approximately $1,200,000 annually above that which would be produced under the Laclede-St. Charles rate schedules.

**2) Consolidation of Rate Classes**

The tariff rate classes have been redefined to provide for seven basic service classifications as shown on Schedule 1, which classes will be uniform in all divisions. The present tariffs contain 27 different service classifications.

**3) Proposed Rate Structure**

The proposed rates applicable to most customers contain a customer charge component of $3.50 per month. The $3.50 customer charge is below the full cost-of-service customer charge to mitigate the adverse impact of the full cost-of-service customer charge on small users. The large usage classes (large volume and interruptible) have a full customer charge of $240 per month. The additional revenues for each class of services are collected on a commodity charge of either a single flat rate or a two block rate, and in the case of large volume customers, an additional single flat demand charge.

General service (non-space heating) customers as well as large volume and interruptible customers are on a single flat commodity rate. In the case of the general service customer, a portion of the full cost-of-service charge is being collected in the commodity charge. General space heating customers are on a two block rate that is designed so that the first block will cover most non-heating use (65 therms/month), and is priced at the same rate as the general service customer. Thus, for non-heating use, both customers are on the same rate. The second block is priced to recover the remaining revenues for space heating customers. Although the second block rate is lower than the first block rate, a portion of the full cost-of-service customer charge is being collected in the second block.

Seasonal service rates are constructed in a similar fashion to general space heating rates with the first 65 therms (non-cooling use) priced at the general service rates, and the second block priced to collect the remaining revenues. Large volume and in-

terruptible rates are single flat commodity charges set to collect revenues remaining after the customer and (for large volume customers only) the demand charge. General L.P. Gas service and unmetered gas light service rates are increased to reflect a higher cost-of-service.

On an aggregate company wide basis, the following revenue shifts among class of service are reflected by this proposed rate structure:

| Rate Class | Increase (Decrease) Annual Revenue | |
|---|---|---|
| | $ | % |
| General Service | 417,400 | +3.90 |
| General Space Heating | (1,144,600) | −0.51 |
| Seasonal Service | 15,800 | +0.87 |
| Large Volume Service | 402,200 | +0.80 |
| Interruptible Service | 137,700 | +1.44 |
| General L. P. Gas Service | 70,600 | +20.35 |
| Unmetered Gas Light Service | 46,200 | +64.26 |
| Special Contracts | 46,900 | +1.01 |
| Sales for Resale | 5,300 | +0.78 |
| | -2,500 | |

To see revenue shifts by division, see Schedule III. To see impact on general space heating customers by division, see Schedule IV.

**4) Allocation of GR-80-210 Rate Increase**

The proposed rates set out herein reflect the addition of the $13,388,153 rate increase granted in Case No. GR-80-210 and specifically result from allocation of such increase on a uniform per therm basis to the redesigned service classifications. The comparison shown for present rates reflect the uniform percentage allocation prescribed at GR-80-210.

Mo PSC Case No. GO-78-38
Stipulation and Agreement
Exhibit A
Schedule III

## LACLEDE GAS COMPANY

### Comparison of Revenue by Proposed Rate Classes
### Present and Proposed Base Tariff Rates
### Including GR-80-210 Rate Increase

| Proposed Rate Classes | Revenue At Present Rates ($000) | Revenue At Proposed Rates ($000) | Revenue Increase (Decrease) ($000) |
|---|---|---|---|
| LACLEDE DIVISION | | | |
| General Service | 10,216.1 | 10,599.8 | 383.7 |
| General Space Heating | 200,597.3 | 199,981.9 | (615.4) |
| Seasonal | 1,625.7 | 1,665.9 | 40.2 |
| Large Volume | 47,483.9 | 47,951.1 | 467.2 |
| Interruptible | 8,780.9 | 8,909.3 | 128.4 |
| General L.P. Gas | 169.1 | 206.4 | 37.3 |
| Unmetered Gas Light | 68.7 | 113.1 | 44.4 |
| Special Contracts | 4,628.7 | 4,675.6 | 46.9 |
| Total | 273,570.4 | 274,103.1 | 532.7 |
| ST. CHARLES DIVISION | | | |
| General Service | 158.6 | 157.3 | (1.3) |
| General Space Heating | 9,514.7 | 9,195.1 | (319.6) |
| Seasonal | 9.7 | 9.4 | (0.3) |
| Large Volume | 749.8 | 780.9 | 31.1 |
| Interruptible | 120.7 | 117.0 | (3.7) |
| Unmetered Gas Light | 3.2 | 5.0 | 1.8 |
| Sales for Resale | 677.5 | 682.8 | 5.3 |
| Total | 11,234.2 | 10,947.5 | (286.7) |

| | | | |
|---|---|---|---|
| MISSOURI NATURAL DIV. | | | |
| General Service | 301.2 | 332.0 | 30.8 |
| General Space Heating | 10,972.6 | 10,593.3 | (379.3) |
| Seasonal | 167.6 | 143.0 | (24.6) |
| Large Volume | 2,167.8 | 2,093.8 | (74.0) |
| Interruptible | 650.4 | 663.4 | 13.0 |
| Total | 14,259.6 | 13,825.5 | (434.1) |
| MIDWEST MISSOURI DIV. | | | |
| General Service | 24.3 | 28.5 | 4.2 |
| General Space Heating | 3,125.3 | 3,295.0 | 169.7 |
| Seasonal | 4.6 | 5.1 | 0.5 |
| Large Volume | 143.4 | 121.3 | (22.1) |
| General L.P. Gas | 177.9 | 211.2 | 33.3 |
| Total | 3,475.5 | 3,661.1 | 185.6 |
| TOTAL COMPANY | 302,539.7 | 302,537.2 | (2.5) |

Mo PSC Case No. GO-78-38
Stipulation and Agreement
Exhibit A
Schedule IV

Bill Level Comparison
General Space Heating Rate
Laclede Division

| Usage Level (Therms) | Present Rates | Proposed Rates | Increase (Decrease) | % Incr. (Decr.) |
|---|---|---|---|---|
| 25 | $ 11.17 | $ 12.63 | $ 1.46 | 13.0% |
| 50 | 21.11 | 21.75 | .64 | 3.0 |
| 100 | 39.12 | 39.05 | .07 | (0.2) |
| 200 | 73.79 | 72.84 | (.95) | (1.3) |
| 350 | 125.80 | 123.52 | (2.28) | (1.8) |
| 700 | 247.16 | 241.76 | (5.40) | (2.2) |
| 1000 | 351.18 | 343.12 | (8.06) | (2.3) |
| 1500 | 524.55 | 512.04 | (12.51) | (2.4) |

Bill Level Comparison
General Space Heating Rate
St. Charles Division

| Usage Level (Therms) | Present Rates | Proposed Rates | Increase (Decrease) | % Incr. (Decr.) |
|---|---|---|---|---|
| 25 | $ 11.84 | $ 12.63 | $ .79 | 6.7% |
| 50 | 21.15 | 21.75 | .60 | 2.8 |
| 100 | 38.59 | 39.05 | .46 | 1.2 |
| 200 | 73.62 | 72.84 | (.78) | (1.1) |
| 350 | 126.45 | 123.52 | (2.93) | (2.3) |
| 700 | 249.75 | 241.76 | (7.99) | (3.2) |
| 1000 | 355.42 | 343.12 | (12.30) | (3.5) |
| 1500 | 531.55 | 512.04 | (19.51) | (3.7) |

Bill Level Comparison
General Space Heating Rate
Midwest Missouri Division

| Usage Level (Therms) | Present Rates | Proposed Rates | Increase (Decrease) | % Incr. (Decr.) |
|---|---|---|---|---|
| 25 | $ 10.89 | $ 13.18 | $ 2.29 | 21.0% |
| 50 | 20.99 | 22.87 | 1.88 | 9.0 |
| 100 | 39.01 | 41.29 | 2.28 | 5.8 |
| 200 | 73.64 | 77.34 | 3.70 | 5.0 |
| 350 | 125.86 | 131.40 | 5.54 | 4.4 |
| 700 | 247.69 | 257.54 | 9.85 | 4.0 |
| 1000 | 352.12 | 365.66 | 13.54 | 3.8 |
| 1500 | 526.17 | 545.87 | 19.70 | 3.7 |

Bill Level Comparison
General Space Heating Rate
Missouri Natural Division

| Usage Level (Therms) | Present Rates | Proposed Rates | Increase (Decrease) | % Incr. (Decr.) |
|---|---|---|---|---|
| 25 | $ 12.11 | $ 13.18 | $ 1.07 | 8.8% |
| 50 | 22.67 | 22.87 | .20 | 0.9 |
| 100 | 42.48 | 41.29 | (1.19) | (2.8) |
| 200 | 79.14 | 77.34 | (1.80) | (2.3) |
| 350 | 134.13 | 131.40 | (2.73) | (2.0) |
| 700 | 262.45 | 257.54 | (4.91) | (1.9) |
| 1000 | 372.43 | 365.66 | (6.77) | (1.8) |
| 1500 | 555.73 | 545.87 | (9.86) | (1.8) |

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, this 15th day of October 1980

/s/ D. Michael Hearst
Secretary